IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOANNA DEAVER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	C.A. NO. 1:17-cv-845
	§	
DMN CORPORATION and AZUMA LEASING CT, L.P.	§	
	§	
	§	
Defendant.	§	**JURY DEMANDED**
	§	

COMPLAINT

Plaintiff, JOANNA DEAVER, files this Complaint and Jury Demand against Defendants DMN CORPORATION and AZUMA LEASING CT, L.P., alleging willful violation of the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b). For causes of action, Plaintiff would show the Court as follows:

I.
PARTIES

1. Plaintiff JOANNA DEAVER is a resident of Travis County, Texas.

2. Defendant DMN CORPORATION. is an entity which may be served with process through its registered agent, David Newberger, 2905 San Gabriel, Suite 218, Austin, Texas, 78705.

3. Defendant AZUMA LEASING CT, L.P. is an entity which may be served with process through its registered agent, David Newberger, 2905 San Gabriel, Suite 218, Austin, Texas, 78705.

4. Defendants Azuma Leasing CT, L.P. and DMN Corporation were, at all times relevant to this case, Plaintiff's employer or joint employer.

II.
JURISDICTION & VENUE

5. Jurisdiction is conferred on this Court under 28 U.S.C. § 1331 and under 29 U.S.C. § 216(b). At all times pertinent to this Complaint, Defendants were an enterprise engaged in interstate commerce, and/or regularly owned and operated businesses engaged in commerce or in the production of goods for commerce as defined by §3(r) and 3(s) of the Act, 29 U.S.C. § 203(r) and (s). Additionally, Plaintiff was individually engaged in commerce and her work was essential to Defendants' business. Defendants have over $500,000 in gross receipts annually. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to this claim, including Defendants' failure to pay wages, occurred in this Division and District. Further, Plaintiff is a resident of this District and Division.

COVERAGE UNDER THE FLSA

6. At all relevant times, Defendants have acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.

7. At all times hereinafter mentioned, Defendants have been an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

8. At all times hereinafter mentioned, Defendants have been engaged in an "enterprise" within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

9. At all times hereinafter mentioned: (a) Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said Defendants are an enterprise and have had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by

any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated). Such handling includes, but is not limited to, equipment and supplies made in states other than Texas.

10. At all times hereinafter mentioned, Plaintiff was an individual "employee" (as defined in Section 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1)) who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207 and whom Defendants at all relevant times "employ[ed]" within the meaning of Section 3(g) of the FLSA, 29 U.S.C. § 203(g). Plaintiff's handling of goods or materials that have been moved in or produced for commerce included, but was not limited to, handling rental items that were made in states other than Texas.

III.
STATEMENT OF FACTS

11. Plaintiff, JoAnna Deaver, was hired by Defendants in October 2011. Ms. Deaver remained employed by Defendants from October 2011 through January 2017. Ms. Deaver was hired into the customer service department, and after one year was promoted to Account Manager for the collections department. She held that position for one year and was then promoted to Team Lead for the collections department, where she remained until her employment was terminated.

12. During one or more weeks of Ms. Deaver's employment with Defendants, Ms. Deaver worked in excess of 40 hours per week (overtime hours). During the period of Ms. Deaver's employment, Defendants regularly failed to pay her for all the hours she worked. This included time Ms. Deaver spent performing her regular duties. Ms. Deaver was told that overtime was not permitted and was required to work off the clock if she needed more than 40 hours per week to complete her assigned duties.

13. During one or more weeks of Plaintiff's employment with Defendant wherein Plaintiff worked overtime hours, Defendant failed to pay Plaintiff one and one-half times her regular rate of pay for each overtime hour worked.

IV.
CAUSE OF ACTION – VIOLATION OF THE FLSA

14. The acts described above violate the Fair Labor Standards Act, which requires employers to compensate their employees for each hour of time spent working on behalf of the employer, and to pay their employees at time and one-half their regular hourly rates for each overtime hour worked. Defendants committed these violations willfully.

V.
DAMAGES

15. As a result of Defendants' unlawful conduct, Plaintiff is entitled to actual and compensatory damages, including compensation for the overtime hours per week for which Defendants refused to pay Plaintiff, but during which Plaintiff performed work for Defendants.

16. Section 216(b) of the FLSA provides that any employer who violates the statute shall be liable for unpaid compensation and an additional equal amount as liquidated damages. Therefore, Plaintiff seeks an award of liquidated damages in an equal amount as the amount of unpaid overtime pay.

17. Plaintiff further seeks liquidated damages as a result of Defendants' willful failure and refusal to pay overtime in violation of Section 7 of the FLSA, 29 U.S.C. § 207.

18. Plaintiff also seeks compensation for the out of pocket expenses and costs of court she will have incurred in this action, as well as reasonable and necessary attorneys fees. *See* 29 U.S.C. § 216(b).

VI.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that:

a. The Court assume jurisdiction of this cause and that Defendants be cited to appear;

b. The Court award damages to Plaintiff as specified above;

c. The Court award reasonable and necessary attorneys fees, expert fees, and costs; and

d. The Court award pre- and post-judgment interest at the highest rates allowed by law.

Plaintiff further prays for all such other relief as the Court may find proper, at law or in equity.

Plaintiff requests a trial by jury of all issues and facts in this case.

Respectfully submitted,

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